

DOCKET FILE COPY
ORIGINAL

Federal Communications Commission

DA 93-1053

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 9 1993

MM Docket No. 92-281

In the Matter of

Amendment of Section 73.202(b), RM-8118
Table of Allotments,
FM Broadcast Stations.
(Columbia Falls, Montana)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: August 26, 1993; Released: September 9, 1993

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration a Petition for Reconsideration ("Petition") filed by Bee Broadcasting, Inc. ("Bee"), licensee of Station KBBZ(FM), Kalispell, Montana, and Station KJJR(AM), Whitefish, Montana, of the *Report and Order* ("R&O"), 8 FCC Rcd 1543 (1993), in the above-captioned docket.¹ The R&O substituted Channel 240C2 for 240A at Columbia Falls, and modified the construction permit for Station KCWX, accordingly. Frank Copsidas, Jr. ("Copsidas") filed an opposition.

2. *Background.* Copsidas, permittee of Station KCWX, Channel 240A, Columbia Falls, Montana, filed a petition for rule making proposing the substitution of Channel 240C2 for Channel 240A and modification of his construction permit accordingly (RM-8118). See *Notice of Proposed Rule Making* ("Notice"), 7 FCC Rcd 7847 (1992). In response to the *Notice*, Bee filed comments alleging that allotment of Channel 240C2 at the site specified by Copsidas would not provide city grade coverage to the entire community of Columbia Falls. Bee argued that more than twenty percent of Columbia Falls would not receive city grade coverage and that the true purpose of the requested modification was to provide principal service to Kalispell and Whitefish, Montana, and not Columbia Falls. Bee also argued that Copsidas intended to abandon service at Columbia Falls in order to serve Kalispell and Whitefish as the studio would be located outside of Columbia Falls. Copsidas responded by providing an engineering study confirming that complete line of sight coverage existed that would enable Channel 240C2 to provide a full 70 dBu signal to the entire community of Columbia Falls at his selected site. In response to the allegations that service to Columbia Falls would be abandoned, Copsidas referred to Section 73.1125 of the Commission's Rules which allow the studio to be located outside the community of license provided the location is within the station's principal community contour. In the R&O, we granted Copsidas' pro-

posal after a Commission engineering analysis determined that city grade coverage would be provided to the community of Columbia Falls at the site specified by Copsidas. We found that the public interest would be served by the upgrade because expanded service would be provided to Columbia Falls and the surrounding area.

3. *Petition for Reconsideration.* Bee argues that the R&O erroneously concludes that Copsidas' proposal will provide city grade coverage to the community of Columbia Falls. According to Bee, Copsidas and the FCC staff's engineering analysis ignore the "real-world" fact that a mountain range between the Copsidas tower site and Columbia Falls precludes line-of-sight coverage to all of Columbia Falls. Bee also argues that Copsidas' true desire is to provide principal service to Whitefish and Kalispell rather than Columbia Falls. Bee contends that not only should the decision to grant Channel 240C2 be reconsidered and denied, the Channel 240A construction permit should never have been granted.

4. Copsidas opposes the Petition on the grounds that it reiterates arguments considered and rejected in the *Report and Order*. Copsidas states that the Commission's R&O was proper and should be affirmed. Copsidas contends that Bee provides no new information to demonstrate that the Commission's determination that Station KCWX could operate from its preferred site and provide service to Columbia Falls was in error. Copsidas notes that Bee provided no engineering study showing that the distances to Copsidas' pertinent contours would be other than would be determined by the Commission's standard prediction method. For this reason, Copsidas argues, Bee's criticism of the engineering showing for Station KCWX is wholly without merit. In response to Bee's allegations that primary service will be provided to Whitefish and Kalispell, rather than Columbia Falls, Copsidas contends that this is merely speculation as no evidence has been provided which supports this claim. Copsidas notes that Section 73.1125 of the Rules currently require that stations maintain a main studio within a station's principal community contour. Copsidas states that should he decide to locate the studio in Whitefish rather than Columbia Falls, he would be in compliance with the Commission's Rules.

5. *Discussion.* Section 1.429 of the Commission's Rules sets forth the limited provisions under which the Commission will reconsider a rule making action. Reconsideration is warranted only if the petitioner cites error of fact or law, or has presented facts or circumstances which raise substantial or material questions of fact which otherwise warrant Commission review of its prior action. The Commission will not reconsider arguments that have already been considered. *Eagle Broadcasting Co. v. FCC*, 514 F.2d 852 (D.C. Cir. 1975). Bee has presented no arguments that were not raised in its original opposition. Further, it has not shown any facts that the Commission previously failed to consider or any errors with respect to the facts or law. Rather, Bee has simply repeated the arguments initially advanced in its comments. Thus, there is no basis to set aside our earlier action granting the substitution of Channel 240C2 for Channel 240A at Columbia Falls.

6. In view of the above, IT IS ORDERED, That the petition for Reconsideration filed by Bee Broadcasting, Inc. IS DENIED.

¹ Public notice of the Petition for Reconsideration was given on

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Policy and Rules Division
Mass Media Bureau